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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.2.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.No.44 of 2003

M/s.Rajarajan Electrical
Equipments P.Ltd.
AIF.4, Industrial Estate,
Maraimalai Nagar,
Chennai 603 209,
rep. By its Managing Director,
Mr.X.Durairaj.

... Appellant

vs.

The Deputy Commissioner of Income-tax,
CO, Circle V(3),
Chennai.

... Respondent

T.C.Appeal filed against the order dated 8.11.2002 in ITA.No.698/Mds/2002 on the file of Income-tax Appellate Tribunal, C-Bench, Chennai (I.T.A. No.730/2001-2002 dated 5.3.2002 on the file of the Commissioner of Income Tax (Appeals) V, Chennai-34 against G.I.No.143-R/98-99 dated 25.9.2001 on the file of the Deputy Commissioner of Income Tax - Company Circle V (3) Chennai against G.I.R.No.143-R dated 26.3.2001 on the file of the Deputy Commissioner of Income - Tax, Company Circle IV (5) Chennai-6.)

For appellant :: Mr.M.Aravind Subramaniam
For respondent :: Mrs.Pushya Sitaraman,
Sr.SC. For IT.

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

As against the order of the Appellate Tribunal dated 8.11.2002 in ITA.No.698/Mds/2002 imposing penalty of Rs.6,67,045/- under section 271(1)(c) of the Income-tax Act, 1961, the unsuccessful assessee has preferred the above appeal raising the following substantial questions of law:

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1.Whether the learned Tribunal was justified in holding that the appellant was guilty of deliberate misstatement of facts and concealment of facts, thereby attracting penalty under section 271(1)(c) of the Income-tax Act in the surrounding facts and circumstances of the case?

2.Whether the learned Tribunal had erred in not holding that the provisions of section 273(A) of the Income-tax Act, were attracted in the instant case and thereby exempted the appellant from paying the impugned penalty assessment?

2. The brief facts of the case are stated as follows:-

2.1. The assessment year involved is 1998-99. The assessee company filed the return for the assessment year 1998-99 admitting a total income of Rs.26,52,200/-. The assessment was completed under section 143(3) of the Act determining a total income of Rs.46,23,676/-. The enhancement in the income assessed was caused because of the addition of Rs.19,71,481/- made by the assessing officer on the ground that the sales turnover to that extent was not brought to the account of the assessee and the sales turnover was kept outside the purview of income-tax assessment.

2.2. On the other hand, the explanation offered by the assessee was that even the sale was effected on 31.3.1998 and the assessee claimed certain deductions under the General Sales Tax Act, the sale was completed only in June 1998, when the purchaser received the goods sold. According to the assessee, the issue of invoice and delivery chalan on 31.3.1998 cannot be construed as the confirmation of sale.

2.3. The assessing officer, however, refused to accept the explanation offered by the assessee as not satisfactory, finding that the assessee raised the sales bill on 31.3.1998 and also filed sales-tax return admitting the same as turnover for the month of March, 1998 and paid sales-tax for the same. The assessee also paid Central Excise duty applicable and claimed the same as expenditure in the profit and loss account based on the delivery chalan prepared by the assessee on 31.3.1998, supported by lorry receipt dated 31.3.1998. Hence, the assessing officer imposed penalty of Rs.6,67,045/- under section 271(1)(c) of the Act.

2.4. Against the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income-tax (Appeals) contending that the assessing officer failed to appreciate the explanation offered by the assessee that even though the assessee had paid the sales-tax, the same was deleted for the next year and the assessee, in fact, paid the income-tax for the said receipt in the assessment year 1999-2000 on the basis that the

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sale got completed only in June, 1998 when the purchaser received the goods in question. It was also the case of the assessee before the Commissioner of Income-tax(Appeals) that the assessee neither concealed income, nor furnished any inaccurate fact, but, on the other hand, paid the income-tax voluntarily in the assessment year 1999-2000. Rejecting the contentions raised by the assessee, the Commissioner of Income-tax (Appeals) confirmed the order of assessing officer by order dated 5.3.2002 which was, on further appeal, confirmed by the Appellate Tribunal. Hence, the present appeal.

3. Mr.Aravind Subramaniam, learned counsel appearing for the assessee reiterated the contentions made on behalf of the assessee before the authorities below that even though the invoice of the impugned sale was issued on 31.3.1998, the sale in fact was completed only in June, 1998 when the purchaser received the goods in question, based on which the assessee paid income-tax for the assessment year 1999-2000 and hence, there is no valid and justifiable reason for imposing penalty under section 271(1)(c) of the Act.

4. Mrs.Pushya Sitaraman, learned senior standing counsel for the Revenue is not disputing the fact that though the invoice was issued on 31.3.1998, the sale was completed only in June, 1998 when the purchaser received the goods as well as the fact that the assessee paid the income-tax for the said receipt voluntarily in the assessment year 1999-2000.

> 5.1. Whether the learned Tribunal was justified in holding that the appellant was guilty of deliberate misstatement of facts and concealment of facts, thereby attracting penalty under section 271(1)(c) of the Income-tax Act in the surrounding facts and circumstances of the case?

5.2. It is a settled law that the expression, 'concealment' as found in section 271 would mean the existence of an intent deliberately to prevent relevant facts from becoming known. The Explanation to section 271 of the Act makes it clear that in such circumstances, the assessee is entitled to offer an explanation that his act was sequel not amounting to concealment or not amounting to furnishing inaccurate particulars.

5.3. In the instant case, the fact remains that the sale of the goods in question was completed only in June, 1998 when the purchaser received the goods, even though the assessee issued invoice on 31.3.1998. So, to decide the question whether the assessee has concealed income or not with intent to prevent the relevant facts from becoming known, the fact that the sale was completed in June,1998 has to be taken into consideration. The act

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of the assessee that it has paid sales-tax for the assessment year 1998-99 with regard to the sale of the goods based on the invoice dated 31.3.1998 and claimed deduction under the General Sales tax and also paid Central Excise duty for the goods would not by itself be a justification to find the assessee at fault that he has concealed income or furnished inaccurate particulars to levy penalty. It is also not in dispute that the assessee paid the income-tax for the sale receipt in the assessment year 1999-2000 voluntarily, even before the scrutiny of the assessment for the assessment year 1998-99 which has not been duly weighed by the authorities below. We are therefore of the considered opinion that the penalty could not be levied.

5.4. Further, the above view is also supported by the decision of a Division Bench of this Court reported in India Cine Agencies Vs. Deputy Commissioner of Income-tax (275 ITR 430) wherein it is held as follows:

> "The battle of wits between the assessee and their advisors on the one hand and the Revenue on the other is bound to result in different view points being projected and, as long as there is nothing to show that the assessee concealed the income with a dishonest intent or had furnished inaccurate particulars either deliberately or as a result of gross negligence which was not capable of being regarded as an innocent act, penalty is not to be ordinarily levied. We cannot agree with the submission made for the Revenue that intent has no place at all in section 271(1)(c) of the Act. The word "conceal" as defined in the Concise Oxford Dictionary as "not allowed to be seen; hide; keep secret; prevent from doing known.". Concealment, implies the existence of a deliberate intent to prevent relevant facts from becoming known.
>
> This, however, is not to say that the assessees can afford to be routinely careless and casual while submitting the returns. They certainly do have a duty to verify the particulars furnished by them and ensure that particulars furnished are indeed accurate. The power under section 271 is discretionary and it is while exercising the discretion that the factors referred to by us are required to be taken into account."

5.5. In this view of the matter, we hold that the Appellate Tribunal was not correct in confirming the penalty. Accordingly, the first question of law is answered in favour of the assessee.

> 6.1. Whether the learned Tribunal had erred in not holding that the provisions of section 273(A) of the Income-tax Act, were attracted in the instant case and thereby exempted the appellant from paying the impugned penalty assessment?

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6.2. With regard to the second question of law, learned counsel appearing for the assessee fairly conceded that the point was neither raised, nor considered by the Appellate Tribunal. Hence, there is no need to raise the question to answer the same.

The appeal stands allowed. No costs. Connected T.C.M.P.No.47 of 2003 is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal,
   Rajaji Bhavan, III Floor, Besant Nagar,
   Chennai

2. The Commissioner of Income-tax (Appeals),V,
   Chennai.

3. The Deputy Commissioner of Income-tax
   Company Circle V(3), Chennai.

4. The Deputy Commissioner of Income Tax,
Company Circle IV (5)
Chennai-6.

1 cc to Mr.M.Aravind Subramaniam, Advocate, Sr. 8599
1 cc to Mrs.Pushya Sitaraman, SR. SC.for IT SR. No.8488

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